

Parties in Possession

Q We have been asked to insure the refinance of a residential apartment building which is occupied by tenants. The lender is requiring that the “parties in possession” exception be removed. Is that acceptable?

A Yes, but it must be replaced with alternate language.

New Jersey law provides residential tenants with certain protections relating to eviction under N.J.S.A. 2A:18-61.1 (which is sometimes referred to as the “Anti-Eviction Act” or the “Tenants’ Bill of Rights”). The law provides that a landlord cannot evict a residential tenant except upon establishment of one of the grounds set forth in the statute as good cause for eviction. In 1994, the New Jersey Supreme Court held that a foreclosing lender could not evict residential tenants without complying with this law [Chase Manhattan Bank v. Josephson, 135 N.J. 209 (1994)].

Accordingly, when insuring the conveyance or financing of a property which is occupied by residential tenants, you may remove the parties in possession exception but it must be replaced with the following:

Subject to the rights of residential tenants under unrecorded leases, as tenants only.

(Of course, an exception would have to be taken to any leases which are actually recorded.)

For a lender, we may be willing to take the following exception which includes some affirmative insurance relating to the leaseholds provided you are given satisfactory proof that the statements regarding the tenancies included in this language are true:

Subject to the rights of residential tenants under unrecorded leases, as tenants only, all of whom are in possession under oral month-to-month tenancies or under leases with terms of less than three years with no options to purchase the premises or other rights of any nature with a priority over the purchase money mortgage except to those found in NJSA 2A:18-61.1.